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Supreme Court of the United States

OCTOBER TERM, 1945

No. ORIGINAL ~~12~~ 6

THE UNITED STATES, *Complainant,*

v.

THE STATE OF CALIFORNIA.

MOTION OF LAWRENCE WARDS ISLAND REALTY COMPANY FOR LEAVE TO FILE A BRIEF AS *Amicus Curiae* and BRIEF OF *Amicus Curiae*

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Supreme Court of the United States

OCTOBER TERM, 1945

No. ORIGINAL 12

THE UNITED STATES, *Complainant,*

v.

THE STATE OF CALIFORNIA.

MOTION FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE*

May it Please the Court:

The undersigned, as counsel for The Lawrence Wards Island Realty Company respectfully moves this Honorable Court for leave to file the accompanying brief in this case as amicus curiæ.

ARCHIBALD N. JORDAN,
Counsel for Lawrence Wards Island Realty Company as Amicus Curiae.

Supreme Court of the United States

OCTOBER TERM, 1945

No. ORIGINAL 12

THE UNITED STATES, *Complainant*,

v.

THE STATE OF CALIFORNIA.

BRIEF OF LAWRENCE WARDS ISLAND REALTY COMPANY, AS *AMICUS CURIAE*.

I.

Preliminary Statement.

Your petitioner has a case now pending in the Court of Claims of the State of New York, a notice of appeal of the judgment of said Court having been filed therein giving notice of appeal to the Appellate Division of the Supreme Court of the State of New York, Third Department, on January 20th, 1946. This case involves similar facts and questions of law as to title to tideland as those involved in the above entitled case now pending in the Supreme Court of the United States. The decision of the Supreme Court in the above entitled case will affect the case of the Lawrence Wards Island Realty Company, Claimant, against the State of New York.

The title to the tidelands of the Lawrence Wards Island Realty Company originates in the Water Patent issued by the State of New York on July 31, 1811, the tidelands con-

sisting of lands under water and lands under water filled in around Wards Island (formerly called Great Barn Island) situated in the City, County and State of New York, at the junction of the Harlem and East Rivers, in the Harbor of New York. The case now pending in the State Court of Claims concerns about 3¾ths acres of land under water and lands under water filled in, known as Water Lot 31 on the Rosa Map of Wards Island, dated 1872, and also as Tax Lot 112, Section 6, Block 1593, of the Tax Map of the Borough of Manhattan, City of New York. It is situated on the westerly side of Wards Island. The Water Lot is about 786 feet long by an average depth of about 240 feet, of which 44,000 square feet is land under water filled in, and about 90,000 square feet is land under water. The Harlem River is a tideway and a navigable river. A description of this property, Lot 31, is on file with this Court in the case of the *Metropolitan-Columbia Stockholders, Inc.*, v. *The City of New York*, October Term, 1942, No. 824, together with a map showing said lot.

The title to this property is derived from a fee simple unrestricted grant to the foreshore and lands under water surrounding Wards Island issued by the State of New York on July 31, 1811, to the Wards and Lawrences, in common, and under a partition action of *Beach* v. *The Mayor*, in 1870, the predecessors in title to your petitioner, being the heirs of Abraham R. Lawrence, one of the original grantees under the patent of 1811, were awarded, among other lots, said Water Lot 31.

The State of New York, for the first time, has questioned the validity of its own patent issued in 1811, over 134 years ago.

Should the United States be decided by this Court in the above entitled action to be the owner of tidelands at the time of the formation of the United States, the title of the State of California to such tidelands would fall, hence the title of the State of New York to its tidelands, and the title of your petitioner coming through the grant from the State of New York, would also fall.

II.

ARGUMENT

Summary of Argument.

POINT A.

Proprietory title to tidelands facing the rivers and ocean was acquired under the Common Law of England by each of the Thirteen Independent States of the United States at the time of the Revolution. Title was acquired in severalty, and not in common, by the States. See Treaty of Paris, 1783. Article I of that Treaty reads:

> "His Britannic Majesty acknowledges the said United States, viz., New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina and Georgia, to be free, sovereign and independent States; that he deals with them as such, and for himself, his heirs and successors, relinquishes all claims to the Government, proprietory and territorial rights of the same, and every part thereof."

POINT B.

Proprietory title to tidelands fronting the rivers and oceans of other States, viz. Florida, Louisiana, Arizona, New Mexico, and California, were acquired by the United States after the Revolution under the civil law and the terms of treaties with various nations, with the exception of those acquired by the State of Texas when independent, and gained by said State of Texas by right of conquest.

POINT A.

The Treaty of Paris was entered into in 1783 between His Britannic Majesty and each one of the 13 Independent States therein named. The private sovereign rights of the Crown of Great Britain were acquired under the Com-

mon Law of Great Britain, each State of the Original Thirteen States acquiring separate sole proprietory ownership to the tidelands along the rivers and foreshore of the ocean within its own boundaries, subject to public fiduciary rights. See Magna Charta, Section 33, requiring all weirs along the rivers of England to come down. (1215 A D) McKinney's Laws. (N. Y.) Constitution, page 1. Also Chapter 25 Laws of State of New York 1779, and Constitution of the State of New York 1777, ARTICLE XXXVI.

The Magna Charta, Sec. 33, reads:

> "All wears for time to come, shall be put down in the rivers of Thames and Medway, and throughout all England, except upon the sea coast".

POINT B.

The civil law, as modified by the respective treaties, under which the States of Florida, Louisiana, Arizona, New Mexico and California, acquired their tidelands and other lands is set forth in Cooper's Justinian, Liber II, Title I, Sections 1 to 5, inc., pages 67, 68, of the Twelve Tables.

Under the civil law the owners of the uplands adjacent to the river banks also owned the proprietory title to the soil of the river bank. (See Secs. 4 and 5, Id.) The foreshore along the ocean front was public and not the subject of ownership by anyone under the law of nations (Secs. 1 to 5, inc., Id.)

The Treaty of Peace between Spain and the United States, Feb. 22, 1821, by which His Catholic Majesty sold East and West Florida to the United States in 1819 (Malloy Treaties, Vol. II, p. 1651), ARTICLE VIII, and the Secret Treaty between Spain and the French Republic (1800), ARTICLE III, Malloy Treaties, Vol. I, p. 506, concerning the sale of Louisiana, promised on behalf of H. C. M. and engaged to recede the colony or province of Louisiana.

The Treaty of Guadaloupe Hidalgo between the United States and Mexico, Feb. 2, 1848, ARTICLE VIII (Malloy Treaties, Vol. I, p. 1107, at p. 1112), states:

"In the said territories, property of every kind, now belonging to Mexicans, not established there, shall be inviolably respected".

And its protocol, May 26, 1848, preserves the "legitimate" (Title) under the Mexican Law in California, New Mexico and Texas. This is also referred to in the Gadsden Treaty of 1853, p. 1123 Id.

The Treaty for the Cession of Louisiana, 1803, ARTICLE II, Malloy Treaties, Vol. I, p. 508, between the President of the United States and France ceded "forever and in full sovereignty the said territory, with all its rights and appurtenances as fully and in the same manner as they have been acquired by the French Republic in virtue of the above mentioned treaty concluded with his Catholic Majesty." The Secret Treaty between the French Republic and his Catholic Majesty, the King of Spain, to the Aggrandizement H. R. H. the Infant Duke of Pama in Italy and to the recession of Louisiana, ARTICLE I (Id.) and ARTICLE II—Auguementation to be given H R H, the Duke of Parma, mentions that it may consist of Tuscany, or the three Roman ecclesiastical provinces. These Treaties carry forward the civil law of Rome, forming the base for the French and Spanish civil law. The civil law, however, does not carry into the State of Texas, as the Independent State of Texas claims its tidelands (and other lands) by right of conquest from Mexico before Texas was admitted to the Union as a State. Its tidelands are not, therefore, subject to the Treaty of Guadaloupe Hidalgo.

Texas does not cite any authority for its title to these lands except the right of a conqueror to do what he pleases with his conquest. This right of a conqueror was recognized in the gift of the Donation of Pepin to the Roman Catholic Church about 756 A. D., being the foundation of the temporal (secular) power of that church. Being made under the civil law of Rome, and consisting of lands conquered by Pepin the Short from the Lombards in the eighth century, the principles of the Civil Law of Rome

extended to the lands conveyed by his Catholic Majesty, the King of Spain, to Florida, Louisiana, New Mexico and California, but not to the territory conquered by the Independent State of Texas, where the titles to tidelands vested in fee simple before the Treaty of Guadaloupe Hidalgo. No treaty entered into by the United States or Texas could affect the validity of any private titles in Texas that had previously vested to the date of Conquest or of the Treaty of Guadaloupe. (See Donation of Pepin, Gibbons' Rome, Vol. V, pp. 121-3, Collier Edition (MDCCCXCIX) (Chapter XLIX).)

Conclusion.

Subject to legitimate prior grants:

1. That the ownership in the tidelands along the river banks of the State of California should be held to be originally in the owners of the adjacent uplands.

2. That the foreshore of the coast of California should be held to belong originally to the State.

3. That the title to the lands under water and lands under water filled in outward from the foreshore of the ocean of California should be held to belong to no one according to the law of nations.

4. That similar holdings as to proprietory ownership should be made as to tidelands and river lands of Florida, Territory of Louisiana of 1803, New Mexico, and Arizona.

5. That the proprietory ownership of tidelands in Texas should be held to be in the State of Texas, or in any private owner who held grants before the Conquest of Texas by the Independent State of Texas, or his successor in interest.

6. That the proprietory ownership of tidelands in the 13 Original Independent States should be held to be separate in each State as regards rivers and ocean fronts.

7. That the ownership of the submerged lands bordering the ocean fronts should be held to belong to no one under the law of nations, but that they are subject to the control of the United States for the purposes of commerce and navigation, and national defense.

8. That the ownership of the lands under water and lands filled in along navigable rivers are in the 13 States, until granted out, but that the ownership of each of the Thirteen States is restricted to said tidelands within that State.

Respectfully submitted,

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No. ~~12~~ 6, Original

IN THE

SUPREME COURT OF THE UNITED STATES

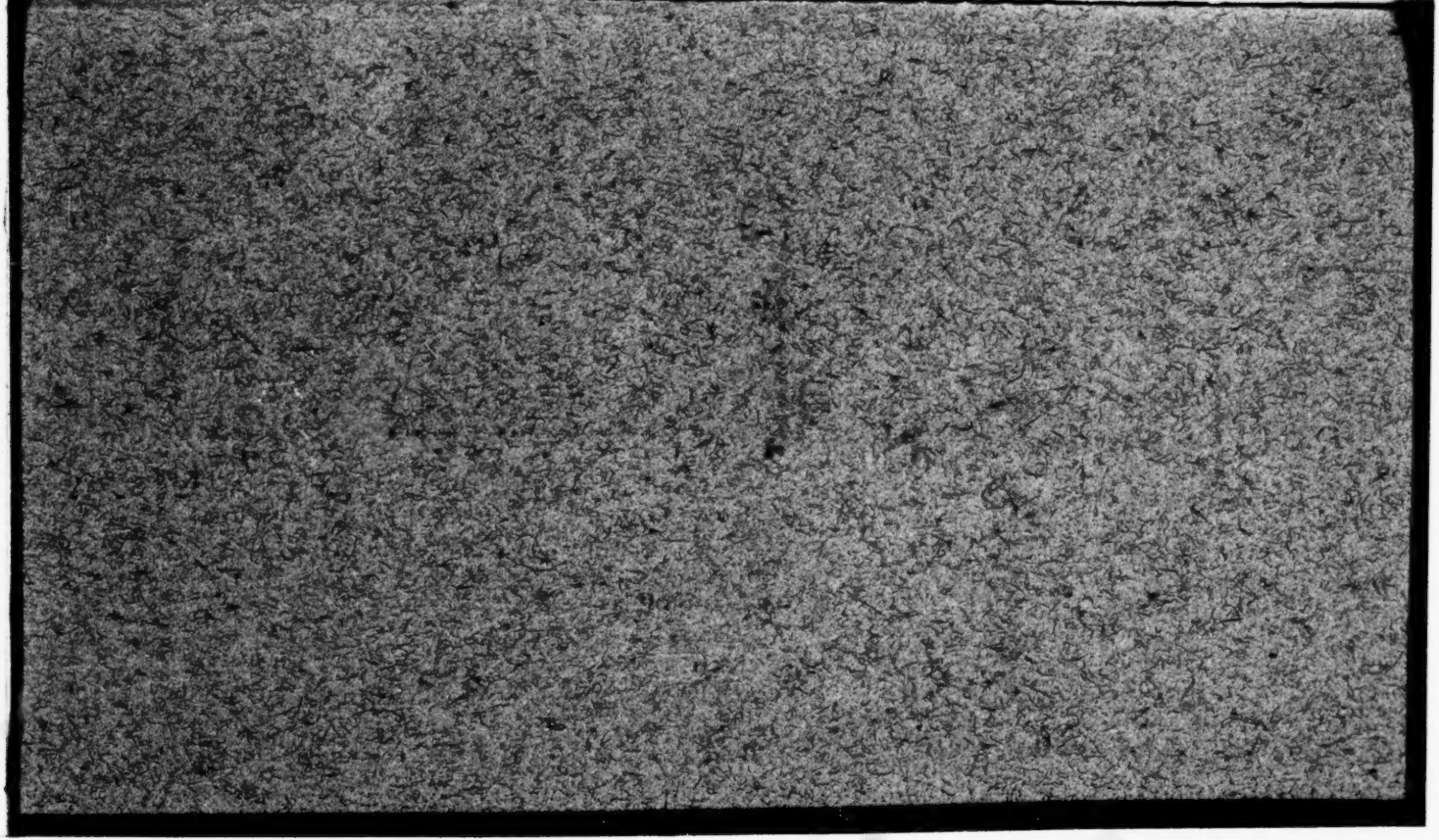
OCTOBER TERM, 1945

UNITED STATES OF AMERICA,
Plaintiff,

vs.

STATE OF CALIFORNIA,
Defendant

STATEMENT BY STATE OF CALIFORNIA, PURSUANT TO REQUEST OF COURT DATED APRIL 22, 1946, OF PROPOSITIONS OF LAW AND FACT PLACED IN ISSUE BY ITS ANSWER.



IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 12, Original

UNITED STATES OF AMERICA,

Plaintiff,

vs.

STATE OF CALIFORNIA,

Defendant

STATEMENT BY STATE OF CALIFORNIA, PURSUANT TO REQUEST OF COURT DATED APRIL 22, 1946, OF PROPOSITIONS OF LAW AND FACT PLACED IN ISSUE BY ITS ANSWER.

To the Honorable the Chief Justice and Associate Justices of the United States Supreme Court:

Pursuant to the Request of the Court dated April 22, 1946, defendant State of California, by its Attorney General, files this statement of the several propositions of law and fact which the State deems have been placed in issue by its Answer heretofore filed in this action:

I

The United States of America is not now and never has been (since the admission of the state of California into the Union on September 9, 1850) the owner in fee simple

or otherwise of the lands or the minerals or other things of value underlying the Pacific Ocean lying seaward of the ordinary low water mark on the coast of California (herein referred to as "said lands"), or any part or portion thereof (except such portions thereof as have been acquired by the United States of America from the State of California or from its successors in interest by grant, cession, quitclaim, lease or condemnation).

II

The United States of America is not possessed of any paramount rights in or powers over said lands or said minerals or other things of value, or any part thereof, other than such governmental powers of regulation and control as the United States of America possesses with respect to all other lands owned by the State of California.

III

The State of California is the owner in fee simple absolute of all lands underlying all navigable waters within the boundaries of the State (subject to legislative grants of portions thereof to the United States of America and to municipalities and counties; subject to leases, easements and other rights therein granted by the State to various parties or condemned by the United States of America; and subject to grants by prior sovereigns confirmed by United States patents) as more particularly set forth in the First Affirmative Defense of the Answer on file herein.

(a) The original thirteen States of the Union own in fee simple, and at all times since not later than July 4, 1776, have so owned, all lands under all navigable waters within their respective boundaries, including all lands under all waters of the sea within at least three miles of their respective coasts, as well as all lands under all navigable bays,

harbors, rivers and lakes (except certain portions thereof expressly granted by said States or by their predecessors). Said original thirteen States became vested with such title and ownership as the successors to the Crown of England prior to the creation or formation of the United States of America.

(b) Upon the execution of the Treaty of Guadalupe Hidalgo, the legal title of all lands underlying all navigable waters within the area thereby acquired from Mexico vested in the United States of America in trust, however, for the state or states to be thereafter created in said area; and upon the admission of California as a State of the Union "upon an equal footing with the original States in all respects whatever," by the Act of Congress of September 9, 1850, the ownership in fee of said lands within the boundaries of the State of California (which boundaries, as established by the California Constitution of 1849 and approved by said Act of September 9, 1850, extend into the Pacific Ocean at least three English miles from the California coast and include all islands, bays and harbors along and adjacent to said coast) vested in said State by virtue of its sovereignty.

(c) By said Act of Admission of September 9, 1850, a compact and agreement was formed and entered into between the United States of America and the State of California (which, as set forth in the First Affirmative Defense, then had a completely organized and functioning State Government) whereby it was agreed for a valuable consideration which was duly rendered and given to the United States by said State, that said State should be admitted into the Union "on an equal footing with the original States in all respects whatever," and by which all tide and submerged lands within the boundaries of said State became vested in said State.

(d) A rule of property law has been established in the State of California as a result of numerous decisions of this Honorable Court following and applying the principle announced in *Martin* v. *Waddell* (1842), 16 Peters 367, and *Pollard's Lessee* v. *Hagan* (1845), 3 Howard 212, and adjudicating and determining that the State of California owns all tide and submerged lands within its boundaries. The State of California in all its dealings with its municipalities, counties and political subdivisions and with its grantees, lessees and licensees has at all times acted in complete reliance upon said rule of property law as announced by the decisions of this Honorable Court.

The matters stated in sub-paragraphs (a), (b), (c) and (d) above are more particularly set forth in the First Affirmative Defense of the Answer on file herein.

IV

The United States of America, each of its branches, and various of its departments and agencies acting within the scope of their authority as prescribed by law, have uniformly, at all times since the admission of the State of California into the Union, and in hundreds of particular instances, recognized, asserted, determined, adjudicated and acquiesced in the title and ownership of the State of California in and to all lands under all navigable waters within the boundaries of said State, and have requested and accepted from the State of California numerous grants, leases, easements and other interests in and to tide and submerged lands under the coastal waters of California lying seaward of the ordinary high water mark and also seaward of ordinary low water mark as well as under its bays, harbors, rivers and lakes; and likewise the United States of America, each of its branches, and various of its departments and agencies acting within the scope of their

authority as prescribed by law, have at all times since the formation of the Union, recognized, asserted, determined, adjudicated and acquiesced in the title and ownership of each of the original thirteen States, and of each of the subsequently admitted States, in and to all lands under all navigable waters within the respective boundaries of said States, as in the Second Affirmative Defense of the Answer on file herein more particularly alleged.

V

Acting upon the faith of and in reliance upon the aforesaid recognition by the United States of America of the State of California's ownership of and title to all lands under all navigable waters within its boundaries,

(a) The State of California has made various and numerous grants, leases, easements, franchises and licenses of, in or to such lands, both along the open coast and in bays, harbors, rivers and lakes, to numerous parties throughout a period commencing shortly after the formation of the State and continuing down to the present time; and

(b) The grantees, lessees, and licensees of the State have expended huge sums of money in the development of the lands covered by said grants, leases, easements, franchises and licenses;

(c) The political subdivisions of said State have assessed and taxed such granted or leased interests; and

(d) The State of California has, by its various departments, agencies, officers and employees, as well as by its various grantees and lessees, gone into possession of and is now, and for many years last past has been, in open, adverse and notorious possession of, and throughout many years last past has exercised and is now exercising all the rights of ownership in and to, large portions of submerged

lands underlying the coastal waters of the State lying seaward of ordinary high water mark and also lying seaward of ordinary low water mark, as well as lands underlying navigable bays, harbors, rivers and lakes within the State; and

(e) The State of California and its municipalities and other grantees have expended huge sums in the reclamation and improvement of large portions of such submerged lands; all as in the Third Affirmative Defense of the Answer on file herein more particularly alleged.

VI

The United States of America, its judicial, executive and legislative branches, and various of its departments and agencies acting within the scope of their agency as prescribed by law, have uniformly and on numerous occasions ever since the year 1850, treated all lands under all navigable waters below the line of mean low water on the open coast of California as being owned by the State of California equally with all lands below the line of mean high water of all navigable waters within the boundaries of the State of California, whether situated on the open coast or within harbors, bays, lakes and rivers (except those conveyed by express grant, lease or license by the State or condemned by plaintiff, and except those lands lying below mean high water mark contained within the exterior boundaries of the United States patents confirming Mexican or Spanish grants to private individuals and municipalities), and no distinction has ever been made or attempted heretofore by the United States of America between the ownership of lands on the open coast below ordinary low water mark, and tide and submerged lands below the mean high water mark, and lands beneath bays, harbors, rivers and lakes, as in the Second and Fourth Affirmative Defenses of the Answer on file herein more particularly alleged.

VII

All issues raised by the Complaint on file herein have been adjudicated against the United States of America and in favor of the State of California, and the question of title to all such lands within the State has become and is now *res judicata* and *stare decisis* as between plaintiff and defendant, by reason of the judgment in the case of *United States of America* v. *Mission Rock Company*, 189 U. S. 391, as more particularly alleged in the Fifth Affirmative Defense of the Answer on file herein.

VIII

The United States of America has acquiesced in and recognized the title of the State of California and of its grantees in and to all tide and submerged lands within the boundaries of the State of California throughout a period of approximately 95 years last past, by reason of the matters and things alleged in the First, Second, Third and Sixth Affirmative Defenses of the Answer on file herein; and the United States of America is thereby precluded from asserting or claiming any right, title or interest adverse to the said title and ownership of the State of California and its grantees (except for specified portions thereof heretofore conveyed to the United States of America by the State of California or by its grantees, or condemned by plaintiff).

IX

The United States of America is estopped from claiming or asserting any right, title or interest in or to the tide and submerged lands lying within the boundaries of the State of California adverse to the title and ownership of said State and its grantees, by reason of the matters and things alleged in the First, Second, Third and Seventh

Affirmative Defenses of the Answer on file herein (except for certain portions thereof heretofore conveyed to the United States of America by the State of California or by its grantees, or condemned by the United States).

X

The persons and corporations with whom the State of California has negotiated and executed leases of lands underlying the Pacific Ocean for the exploitation of petroleum, gas and other mineral deposits are not too numerous to name or make parties to this action, as set forth in Paragraph III of the Answer on file herein.

XI

None of the lessees of the State of California have, in violation of any rights of the United States, entered upon said lands underlying the Pacific Ocean or any part thereof, or drilled wells for the recovery of petroleum or gas or other hydrocarbon substances, or any substances, as set forth in Paragraph III of the Answer on file herein.

XII

Pacific Western Oil Corporation referred to in plaintiff's complaint now occupies and claims under Lease No. 92, as amended by Lease No. 92a, executed in 1929 by and between the State of California and said corporation, an area of tide and submerged lands near Elwood, in Santa Barbara County, California. The State of California, by and through its lessee, Pacific Western Oil Corporation, is and has been, since in or about 1929, in actual open and notorious possession of the area of tide and submerged lands described in said Lease No. 92, as amended by said Lease No. 92a, claiming the same adversely to all the world except the State of California. Said tide and submerged

lands lie under a part of the Santa Barbara Channel and not in or under the Pacific Ocean on the open coast. All the above is more particularly set forth in Paragraph IV of the Answer on file herein.

XIII

Pacific Western Oil Corporation is not converting to its own uses any petroleum taken from lands in the Pacific Ocean below the line of mean low tide under leases granted by the State of California, as set forth in Paragraph IV of the Answer on file herein.

XIV

The United States of America has made no demand upon Pacific Western Oil Corporation for the surrender of possession of the lands described in said Lease No. 92, as amended by said Lease No. 92a, or that Pacific Western Oil Corporation discontinue the extraction and removal of petroleum or other minerals from the said lands; except that the United States of America, without prior demand on Pacific Western Oil Corporation, on or about May 29, 1945, commenced an action in the United States District Court for the Southern District of California, Central Division, entitled "United States of America, Plaintiff, v. Pacific Western Oil Corporation, a corporation, Defendant," being Case No. 4493-B Civil, seeking to recover possession of certain tide and submerged lands therein described, which action was dismissed on motion of the United States of America on October 19, 1945, all as set forth in Paragraph IV of the Answer on file herein.

XV

Neither the State of California nor its lessees nor any other person acting under or pursuant to State Authority

at any time has trespassed or will trespass upon the lands alleged to be in controversy, or any part thereof; and neither said State nor any of its lessees nor anyone acting under authority of said State, in taking or using the minerals or other things of value from, in or under the lands alleged to be in controversy, will be in violation of any rights of the United States; and the United States will not suffer irreparable, or any, injury therefrom or thereby, all as set forth in Paragraph VI of the Answer on file herein. It is not true that the United States of America has no adequate, or any, remedy except by this action.

XVI

It is, of course, recognized that the objections set forth in the Answer to the indefiniteness and uncertainties of plaintiff's complaint, under ordinary rules of pleading, might have been made the subject of a motion for a more definite statement of plaintiff's case. However, it was defendant's belief that in a suit between sovereigns the better practice would be to include all objections to the sufficiency of plaintiff's complaint in defendant's Answer.

By Paragraph II of the Answer the following propositions as to the insufficiency and uncertainty of plaintiff's complaint (and particularly of Paragraph II thereof) are placed in issue:

It cannot be determined from said complaint

(a) What times are referred to in the phrase "all times herein material."

(b) At what time it is alleged that plaintiff became "the owner in fee simple of, or possessed of paramount rights in and powers over, the lands, minerals and other things of value underlying the Pacific Ocean, * * *."

(c) Whether plaintiff claims to be the owner in fee simple of said lands and properties or claims merely to be possessed of "paramount rights in and powers over" them.

(d) What rights or what powers are referred to in the phrase "paramount rights in and powers over."

(e) What waters are referred to in the phrase "inland waters." Are harbors which have been created by the construction of artificial breakwaters in the open sea "inland waters," and does plaintiff claim title to the lands underlying such waters?

(f) What is meant by the phrase "extending seaward three nautical miles," as to whether it means three nautical miles seaward from "the ordinary low water mark" or three nautical miles "outside of the inland waters."

(g) What is meant or intended by the following phrase: "the lands, minerals and other things of value underlying the Pacific Ocean, lying seaward of the ordinary low water mark on the coast of California and outside of the inland waters of the State, extending seaward three nautical miles * * *."

(h) What is meant by the phrase "the ordinary low water mark," in its application to each of the numerous bays, harbors and indentations on the coastline of California, and whether the area extending three nautical miles seaward therefrom is to be measured from the ordinary low water mark within such bays, harbors and indentations or from a straight line drawn from headland to headland across the entrance of such bays, harbors and indentations.

(i) Whether plaintiff claims to own the lands underlying the numerous bays, harbors and indentations in the coastline of California, including among others such bays, harbors and indentations as San Pedro Bay, Long Beach

Harbor, San Pedro Channel, Santa Monica Bay, Santa Barbara Channel, Monterey Bay, Half Moon Bay, Bodego Bay, Drake Bay and Humboldt Bay.

(j) What lands along the Coast of California are claimed by plaintiff in this action; and particularly what is meant by the phrase "ordinary low water mark" as to whether the landward boundary of the lands claimed by plaintiff is the line of ordinary low water as it existed in a state of nature on September 9, 1850 without regard to natural or artificial changes which have taken place in the coast line since that date; and if not, what is the landward boundary of the lands claimed by plaintiff in this action?

Respectfully submitted,

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